

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IPLEARN, LLC,

Plaintiff,

v.

K12 INC.,

Defendant.

C.A. No. 11-1026-RGA

STIPULATION OF DISMISSAL

WHEREAS, Plaintiff IpLearn, LLC (“IpLearn”) filed this lawsuit against Defendant K12 Inc. (“K12”) on October 26, 2011;

WHEREAS, Count I of IpLearn’s amended complaint alleges that K12 has infringed and is infringing one or more claims of U.S. Patent No. RE 38,432 (“the ’432 patent”);

WHEREAS, K12 denies infringement of the ’432 patent;

WHEREAS, on September 27, 2011, IpLearn brought an action in this Court for infringement of the ’432 patent against Blackboard Inc. (“Blackboard”) (C.A. No. 11-876-RGA, D.I. 1 at ¶ 8);

WHEREAS, IpLearn and K12 agreed that in view of a license between K12 and Blackboard, IpLearn would pursue its claims of infringement against Blackboard, and IpLearn’s claims of infringement against K12 were stayed (D.I. 50);

WHEREAS, on November 7, 2014, IpLearn and Blackboard entered into a stipulation dismissing with prejudice all claims brought by IpLearn, which the Court granted on November 10, 2014 (C.A. No. 11-876-RGA, D.I.-267-268);

WHEREAS, IpLearn stipulates to dismissal with prejudice of Count I of its amended complaint, while expressly reserving the right to pursue any claims against K12 based on the '432 patent to the extent infringement is not asserted against products or services K12 licenses from Blackboard and to the extent such alleged infringement is not asserted against products or services that are the same as, or not more than colorably different than, any product or service offered by K12 on or before January 15, 2015;

WHEREAS, K12 preserves and does not waive any defenses to any allegation of infringement of the '432 patent, including without limitation each defense stated in K12's First Amended Answer (D.I. 138) (*i.e.*, non-infringement, invalidity, prosecution history estoppel, laches, governmental immunity, limitations on damages and costs, limitation on injunctive relief, and patent exhaustion);

WHEREAS, Count II of IpLearn's amended complaint alleges that K12 has infringed and is infringing one or more claims of U.S. Patent No. 6,685,478 ("the '478 patent");

WHEREAS, K12 denies infringement of the '478 patent;

WHEREAS, on June 11, 2014, IpLearn stipulated that K12 does not infringe the asserted claims of the '478 patent under the Court's construction of the term "learning user," though IpLearn disagrees with the Court's construction (D.I. 165);

WHEREAS, IpLearn stipulates to dismissal with prejudice of Count II of its amended complaint, while expressly reserving the right to pursue any claims against K12 based on the '478 patent to the extent such alleged infringement is not asserted against products or services that are the same as, or not more than colorably different than, any product or service offered by K12 on or before January 15, 2015;

WHEREAS, K12 preserves and does not waive any defenses to any allegation of infringement of the '478 patent, including without limitation each defense stated in K12's First Amended Answer (D.I. 138) (*i.e.*, non-infringement, invalidity, prosecution history estoppel, laches, governmental immunity, limitations on damages and costs, limitation on injunctive relief, and patent exhaustion);

WHEREAS, Count III of IpLearn's amended complaint alleges that K12 has infringed and is infringing one or more claims of U.S. Patent No. 6,688,888 ("the '888 patent");

WHEREAS, K12 denies infringement of the '888 patent;

WHEREAS, on June 25, 2014, K12 filed a motion for summary judgment of invalidity, non-infringement, and no pre-suit damages (D.I. 173);

WHEREAS, on December 17, 2014, the Court granted in part K12's motion for summary judgment of invalidity, non-infringement, and no pre-suit damages (D.I. 300), based on the holding that the asserted claims of the '888 patent (claims 9, 10, 19, 20, and 35) do not claim patent-eligible subject matter under 35 U.S.C. § 101 (D.I. 299);

WHEREAS, neither IpLearn nor K12 seek an opinion from the Court regarding other issues related to non-infringement, indefiniteness, and pre-suit damages raised by K12's motion for summary judgment (*see* D.I. 299 at 2 n.3), IpLearn's motion for partial summary judgment relating to issues of validity and infringement (D.I. 182), or any other pending motions (*see* D.I. 299 at 2 n.2);

WHEREAS, IpLearn stipulates to dismissal with prejudice of Count III of its amended complaint;

WHEREAS, IpLearn expressly waives all right of appeal in this action, including waiver of its right to appeal the Court's order dismissing claims of indirect infringement and denying

leave to file a second amended complaint (D.I. 20), the Court's memorandum opinions and orders regarding claim construction (D.I. 117, 151, 152), and the Court's memorandum opinion and order granting in part K12's motion for summary judgment (D.I. 299, 300); and

WHEREAS, K12 expressly waives the right in this action to make a motion for an award of attorney's fees and costs and to seek a determination that this action is an exceptional case pursuant to 35 U.S.C. § 285.

NOW, THEREFORE, IT IS HEREBY STIPULATED that all counts of IpLearn's amended complaint in this action are dismissed with prejudice with each party to bear its own fees and costs.

Dated: January 15, 2015
Respectfully submitted,

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